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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

BENITA J. BROWN, CRAIG
CONNELLY, and KRISTINE
CONNELLY, as individuals and on behalf
of all others similarly situated,

Plaintiffs,

vs.

PORTER, MCGUIRE, KIAKONA &
CHOW LLP, a Hawai'i limited liability
partnership, and EKIMOTO & MORRIS,
LLLC, a Hawai'i limited liability law
company, as individual entities; THE
ASSOCIATION OF APARTMENT
OWNERS OF TERRAZZA/
CORTEBELLA/LAS BRISAS/TIBURON
and ASSOCIATION OF APARTMENT
OWNERS OF KO OLINA KAI GOLF
ESTATES AND VILLAS, a Hawai'i
corporation, as individual entities and on
behalf of all others similarly situated; DOE
DEFENDANTS 1-100,

Defendants.

Civil No. 1:16-cv-00448-LEK-KSC

**PLAINTIFFS BENITA J.
BROWN, CRAIG CONNELLY,
AND KRISTINE CONNELLY'S
JOINT REPORT OF PARTIES'
RULE 26(f) PLANNING
MEETING ON SEPTEMBER 21,
2016; CERTIFICATE OF
SERVICE**

CLASS ACTION

SCHEDULING CONFERENCE:
DATE: October 17, 2016
TIME: 9:00 a.m.
JUDGE: Hon. Kevin S. C. Chang

Trial Judge: Leslie E. Kobayashi
Trial Date: Not Assigned

**PLAINTIFFS BENITA J. BROWN, CRAIG CONNELLY, AND
KRISTINE CONNELLY'S REPORT OF PARTIES' PLANNING MEETING**

1. The following persons participated in a Rule 26(f) conference on September 21, 2016, at 11:00 a.m. (HST) by telephone:

a. For Plaintiffs:

(i) Steven K. S. Chung, Chanelle M. C. Fujimoto, and Michael L. Iosua of Imanaka Asato, LLC;

(ii) Timothy G. Blood and Camille S. Bass of Blood Hurst & O'Reardon, LLP; and

(iii) Timothy D. Cohelan, Isam C. Khoury, and J. Jason Hill of Cohelan Khoury & Singer.

b. For Defendant Porter, McGuire, Kiakona & Chow LLP: Duane R. Miyashiro of Adams Miyashiro Krek, LLP.

c. For Defendant Ekimoto & Morris, LLC: Peter W. Olson of Cades Schutte.

d. For Defendant Association of Apartment Owners of Terrazza/Cortebella/Las Brisas/Tiburon: David R. Major of Bays Lung Rose Holma.

e. For Defendant Association of Apartment Owners of Ko Olina Kai Golf Estates and Villas: David J. Minkin of McCorriston Miller Mukai MacKinnon.

f. The doe defendants are yet to be identified.

Plaintiffs and Defendants jointly submit this report.

2. **Initial Disclosures.** There are at least six related cases currently pending in Hawai'i federal and state courts.¹ All of the cases involve a common legal issue: whether a homeowners association or its agent can nonjudicially foreclose pursuant to Part I of Hawai'i's nonjudicial foreclosure statute rather than Part II. Plaintiffs would like the Court to determine this core legal issue first before proceeding with litigation in the case. The parties will complete their initial disclosures, as required by Rule 26(a)(1), by October 21, 2016.

3. **Discovery Plan.** The parties propose this discovery plan:

a. Plaintiffs will seek discovery on subjects including, but not limited to: the foreclosure notices sent to plaintiffs and any other correspondence between the parties regarding the foreclosures and sales of the properties; nonprivileged communications between the law firm defendants and the condominium association defendants regarding the foreclosures; the condominium associations' practices and procedures manuals/protocols; the contracts between

¹ The pending cases are: *Galima, et al. v. Ass'n of Apartment Owners of Palm Court, et al.* (D. Haw., Case No. 1:16-cv-00023-LEK-KSC); *Ass'n of Apartment Owners of Palm Court v. Galima, et al.* (State of Haw., First Cir., Case No. 1RC15-1-10001); *Kwong v. Ass'n of Apartment Owners of Kaiolu Sunrise, et al.* (State of Haw., First Cir., Case No. 1CC16-1-001697); *Valencia, et al. v. Ass'n of Apartment Owners of Palm Villas II, et al.* (State of Haw., First Cir., Case No. 1CC16-1-001294); *Ass'n of Apartment Owners of Palm Villas II v. Valencia, et al.* (State of Haw., First Cir., Case No. 1RC16-1-003612); *Carlos v. Ass'n of Apartment Owners of Sealodge II, et al.* (State of Haw., Fifth Cir., Case No. 5CC16-1-000024).

Plaintiffs and the condominium associations; and documentation regarding the sales of the properties. Defendants will seek discovery on subjects including, but not limited to: all encumbrances on the units, including mortgages or other debt obligations; Plaintiffs' failure to pay mortgage debt and assessments; any efforts the Plaintiffs made to preserve their rights under law in the course of the foreclosures; statute of limitations defenses; standing issues; and alleged damages.

b. Discovery deadlines shall be in accordance with the Federal Rules of Civil Procedure.

c. All other discovery issues to be determined later, as necessary, or as set by the Court.

d. Deadlines for Plaintiffs and Defendants to submit reports from expert witnesses under Rule 26(a)(2): As set by the Court.

e. Deadlines to supplement discovery responses under Rule 26(e): As set by the Court.

4. Other Items.

a. Plaintiffs must join additional parties no later than: As set by the Court, and amend the pleadings by: As set by the Court.

b. Defendants must join additional parties no later than: As set by the Court, and amend the pleadings by: As set by the Court.

c. Deadline to file any dispositive motions deadline: As set by the Court.

d. Plaintiffs request that the Court first determine the main legal issue in this litigation: whether a homeowners association or its agent can nonjudicially foreclose pursuant to Part I of Hawai'i's nonjudicial foreclosure statute rather than Part II. Plaintiffs believe the determination of this issue will enhance the prospects for settlement and mediation. Defendants believe there are other legal defenses to Plaintiffs' claims and believe those defenses should also be addressed in dispositive motions presented to the Court.

e. The parties are prepared to consider alternative dispute resolution options, including, without limitation, a settlement conference with the court or participation in mediation. Plaintiffs believe this should take place upon determination of the issue of whether Defendants were required to nonjudicially foreclose under Part II. Defendants believe this should occur after the determination of any initial dispositive motions brought by Defendants.

f. The parties request a pretrial conference with the Court on: As set by the Court.

g. Final Witness List and Exhibit List under Rule 26(a)(3) are due:

(i) From Plaintiffs by: As set by the Court.

(ii) From Defendants by: As set by the Court.

(iii) Deposition designations by: As set by the Court.

(iv) Exhibits by: As set by the Court.

h. Parties have [As set by the Court] days after service of the final witness and exhibit lists to list objections under Rule 26(a)(3).

i. Trial:

(i) Case should be ready for trial by: [premature].

(ii) At this time, trial is expected to take [premature] days.

j. Regarding other matters, as stated in Sections 2 and 4(d) above, Plaintiffs request that the Court first determine whether a homeowners association or its agent can nonjudicially foreclose pursuant to Part I of Hawai'i's nonjudicial foreclosure statute rather than Part II. Defendants request that the Court determine that issue and other legal defenses that may be dispositive of Plaintiffs' claims.

DATED: Honolulu, Hawai'i October 11, 2016.

/s/ Steven K. S. Chung
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CHANELLE M. C. FUJIMOTO
MICHAEL L. IOSUA
TIMOTHY G. BLOOD (*pro hac vice*)
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Attorneys for Plaintiffs
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